

**RULES  
OF THE  
MISSISSIPPI DEPARTMENT OF AGRICULTURE AND COMMERCE**

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**SUBPART 3-BUREAU OF PLANT INDUSTRY  
CHAPTER 07-General Rules of Procedure Penalty Assessment Guidelines**

**Purpose**

~~100 — The following rules are adopted in accordance with Section 69-23-57 Mississippi Code, as amended, and shall control hearings conducted by the Mississippi Department of Agriculture and Commerce, Bureau of Plant Industry, hereinafter referred to as the “Bureau”, pursuant to Sections 69-19-1 through 69-19-11 and Sections 69-21-27 and Sections 69-23-1 through 69-23-133 of the Mississippi Code of 1972 or any rules or regulations promulgated thereunder.~~

**Designated Reviewing Officer**

~~101 — The State Entomologist or his designated employee shall act as a reviewing officer.~~

**Complaint**

~~102 — When a complaint is received, either from an individual or from Department personnel pursuant to an investigation, the reviewing officer shall:~~

- ~~1. Cause the complaint to be in writing and signed by the inspector making the charge;~~
- ~~2. Insure that the complaint is filed in the office of the Bureau of Plant Industry; and~~
- ~~3. Send a copy of the complaint and any supporting documents to the person accused along with a request for the accused to respond to the allegations within thirty (30) days from receipt of such notice. Said complaint and supporting documentation shall be served on the accused by registered mail, return receipt requested, or by any method allowed by Rule 4 of the Mississippi Rules of Civil Procedure.~~

**Reviewing Officer’s Recommendation**

~~103 — Upon receipt of the response and any supporting documents from the accused, the reviewing officer shall screen all information on file to determine the merit of the complaint or lack thereof. Based on the evidence, the reviewing officer may:~~

1. ~~Meet with the accused to discuss the alleged violation; or~~
2. ~~Recommend to the Commissioner of Agriculture and Commerce, hereinafter referred to as "Commissioner", that the complaint be dismissed; or~~
3. ~~Recommend to the Commissioner that an appropriate penalty, be levied in accordance with the Penalty Assessment Guidelines contained in Section 25.~~

#### Formal Settlement Conference

104 — ~~The accused shall have thirty days (30) from receipt of the recommendation of the reviewing officer within which to file, with the reviewing officer, a written request for an informal settlement conference. If the accused requests a conference as provided above, the reviewing officer shall meet with the accused to discuss the proposed penalty and the possibility of an agreed settlement. If, in the judgment of the reviewing officer, a reasonable settlement is reached, the reviewing officer shall inform the Commissioner and revise the penalty recommendation accordingly.~~

#### Request For a Hearing

105 — ~~The accused shall have thirty days (30) from receipt of the Commissioner's decision within which to file, with the reviewing officer, a written request for a hearing. If the accused requests a hearing the Commissioner shall appoint three (3) members of the advisory board to the Bureau of Plant Industry, hereinafter referred to as the "Board", to act as a hearing committee, hereinafter referred to as the "Committee." The Commissioner may name one member of the committee to serve as chairman. The Committee shall designate a hearing, in the presence of the Committee, however, unless the hearing officer is a member of the committee, he shall not participate in nor attempt to influence the Committee's findings of fact and conclusions of law.~~

#### Notice

106 — ~~Notification of the hearing should include the reason or purpose for the hearing, the rules and regulations involved and the date, time and place of the hearing. The accused shall be notified in writing by registered mail, return receipt requested, at least fifteen (15) days in advance of the hearing.~~

#### Amendments

107 — ~~At any time prior to the close of the hearing, the complaint may be amended adding new provisions. In the event the complaint is amended, the hearing officer may, on the request of the accused, adjourn the hearing for a period to be determined by the hearing officer, if the hearing officer determines that such an adjournment is necessary to avoid prejudice to the accused.~~

#### Answer

~~108.01 The accused may file an answer to the allegations set forth in the complaint from the reviewing officer signed by the accused or his representative within the period of time for answering set forth in the notice.~~

~~108.02 Failure to file an answer to or plead specifically to any allegation of fact in the complaint may constitute an admission of such allegation.~~

#### Motions and Requests

~~109.01 All motions and requests shall be filed with the hearing officer. All pre-hearing motions and requests shall be in writing and filed no later than seven (7) days in advance of the hearing. The hearing officer shall rule upon all motions and requests.~~

~~109.02 Any motion will be entertained prior to the hearing except a motion to dismiss on the pleadings and motion for discovery.~~

~~109.03 All written motions shall state the particular order, ruling, or action desired and the grounds therefore.~~

#### Time and Place of Hearing

~~110 The time and place of the hearing shall be set forth in the notice. If any change in the time or place of the hearing is made, the hearing officer shall serve a notice of change upon the parties.~~

#### Representation

~~111 All parties may represent themselves or be represented by counsel.~~

#### Failure to Appear

~~112 If any party to a proceeding fails to appear at the hearing such party shall be deemed to have waived the right to an oral hearing in the proceedings in the absence of good cause being shown.~~

#### Order of Proceeding

~~113 Except as may be determined by the hearing officer, the complainant shall proceed first at the hearing.~~

#### Hearing

~~114 Within thirty (30) days of notification from the Commissioner, the hearing officer shall schedule a hearing at the next regularly scheduled quarterly meeting of the~~



~~Board or such other date that may be acceptable to all parties. The hearing officer may grant continuances, in his discretion, for good cause. Written notice of the date, time and place of such hearing shall be mailed to the accused by registered mail, return receipt requested, not less than fifteen (15) days prior to the commencing of the hearing. A duly qualified court reporter shall be in attendance and shall make a full and complete transcript of the proceedings. The hearing shall be closed unless the accused shall request a public hearing. The hearing officer shall impose necessary restrictions to ensure an orderly and impartial proceeding.~~

### Evidence

- ~~115.01 The testimony of witnesses at a hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the hearing officer, be examined separately and apart from all other witnesses except those who may be parties to evidence.~~
- ~~115.02 All relevant evidence that is not unduly repetitious shall be admitted. Hearsay, as defined by the Mississippi Rules of Evidence, shall be admissible only to the extent that it corroborates other evidence.~~
- ~~115.03 If a party objects to the admission or rejection of any evidence or to the limitation of the scope or any examination or cross-examination, such party shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the hearing officer.~~
- ~~115.04 A true copy of every written entry in the records of the Department, made by an officer or employee thereof in the course of official duties and relevant to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.~~
- ~~115.05 Except where the hearing officer finds that the furnishing of copies is impracticable, copies of each exhibit, in addition to the original, shall be filed with the hearing officer, for the use of the other parties to the proceeding. Provided that a true copy of an exhibit may be substituted for an original.~~
- ~~115.06 Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or an exhibit, it shall be inserted into the transcript in its entirety.~~
- ~~115.07 At the request of the hearing officer, each party may file proposed findings of facts and conclusions of law, and a brief in support thereof, within such time as the hearing officer may proscribe. The hearing officer may request that such~~

~~proposed findings of facts and conclusions of law be filed before, during or after hearing.~~

#### Filing

~~116 — All documents or papers required or authorized to be filed shall be filed with the hearing officer and copies served on all parties with a certificate of service which states the date of service and who was served.~~

#### Computation of Time

~~117 — Computation of time shall be the same as required in the Mississippi Rules of Civil Procedure.~~

#### Extensions of Time

~~118 — The time for filing any document or paper required or authorized by these rules can only be extended by the hearing officer, if the request for extensions is made prior to the expiration of the final date allowed for such filing, and if in the judgement of the hearing officer there is good reason for the extension and the opposing party will not be prejudiced.~~

#### Recommendation of the Committee

~~119 — At the conclusion of the hearing, the Committee upon the majority vote of the members shall furnish the Commissioner a written opinion incorporating its findings of facts and conclusions of law and recommended penalty.~~

#### Powers of the Committee

~~120.01 The Committee is empowered to:~~

- ~~1. Rule upon motions and requests;~~
- ~~2. Set the time and place of the hearing or conference, adjourn the hearing from time to time, and change the time and place of the hearing;~~
- ~~3. Administer oaths and affirmations;~~
- ~~4. Examine witnesses;~~
- ~~5. Admit or exclude evidence;~~
- ~~6. Hear oral argument of facts and law;~~
- ~~7. Issue subpoenas; and~~
- ~~8. Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding. The committee may exercise any of its powers, with the exception of dispositive rulings, through a hearing officer selected by the Committee.~~



~~120.02 Subpoenas issued by the Committee shall be served by the sheriff of the county in which they are to be executed. The Committee may invoke the aid of any court of general jurisdiction to enforce the requirements of its subpoenas.~~

#### Powers of the Commissioner

~~121 — Upon receipt of the recommendation of the Committee, the Commissioner shall enter an order accepting or rejecting the Committee's written opinion. Should the Commissioner reject the Committee's opinion, he shall set forth in the order his reasons for doing so.~~

#### Notice and Waiver

~~122 — Failure of the accused to request a hearing or respond to the complaint within thirty (30) days shall constitute a waiver of the right to a hearing. A copy of the notification sent by the Commissioner to the accused shall be sufficient proof as to the judgment of the Commissioner.~~

#### Penalties

~~123 — The Commissioner shall notify the accused of his final decision. Any penalties assessed by the Commissioner shall be due and payable within forty five (45) days of the notification of the decision. The Commissioner, in his discretion, may grant additional time within which penalties may be paid. The Commissioner, through his representative, may be paid. The Commissioner, through his representative, may file suit in the circuit court of the county where the defendant resides or in the First Judicial District of Hinds County or any other court with appropriate jurisdiction to enforce the decision of the Commissioner and recover attorney's fees and court costs.~~

#### Penalty Assessment Guidelines Purpose

~~124.01~~ 100.01 Purpose: These rules are adopted under the authority granted in Miss. Code of 1972, Section 69-25-57. The purpose of these guidelines rules is to provide guidance for the Commissioner of Agriculture and Bureau of Plant Industry personnel reviewing officer and the hearing committee (hereinafter, "hearing officers") of the Bureau of Plant Industry, a division of the Mississippi Department of Agriculture and Commerce, in assessing civil penalties or other punishment for any violations of Miss. Code of 1972, Sections 69-19-1 through 69-19-11 69-19-15, Sections 69-21-101 through 69-21-27 128, and Sections 69-23-1 through Section 69-23-133 69-23-135, and the rules and regulations of the Bureau of Plant Industry. promulgated thereunder. In determining the enforcement remedy, the reviewing hearing officers shall consider the appropriateness of such penalty for the particular violation, the effect of the penalty on the person's ability to continue in business, and the gravity of the violation. These guidelines are designed to insure consistency, to the extent

practicable, for similar violations in the assessment of penalties or other punishment.

#### Determination of Enforcement Remedy

~~124.02~~ 100.02 ~~Determination to Apply Enforcement Remedy:~~ The reviewing hearing officers must determine whether the violation which is alleged to have been committed would warrant an enforcement action. In deciding on the appropriate enforcement remedy, the hearing officers shall consider the type of violation and the seriousness or gravity of the violation. A written notice of warning may be issued in the event of a minor violation when it appears that the public interest would be adequately served thereby.

~~124.03~~ ~~Proposing the Appropriate Response:~~ In proposing the enforcement remedy, the reviewing officer shall consider the type of violation and the seriousness or gravity of the violation.

#### Types of Violations

~~124.04~~ 100.03 Types of Violations include, but are not limited to, the following:

1. Credentials/-Licensure: Violations of the licensing, permit, identification card, registered technician, applicator certification, equipment marking, operation, product registration, etc.
2. Pesticide Registration/-Labeling: Application, distribution, sale, use and/or recommendations, etc.
  - a. Products canceled, suspended, or under stop-sale.
  - b. The utilization of a product for a use not registered under, or exempted by, state or federal law. ~~Products not registered for uses not granted by (1) the U. S. Environmental Protection Agency, or (2) the State of Mississippi (3) under Section 24 (c) of FIFRA, or (4) which has not been granted an exemption for that particular use under Section 18 of FIFRA (5) for which there is not an experimental use permit under FIFRA for such use.~~
  - c. Use in a manner inconsistent with its labeling.
  - d. Prohibited acts/-uses.
  - e. Improper labeling.
3. Records: reporting, contracts, bonds, insurance, sales, inspections, etc.
4. Fraudulent, faulty, careless, negligent acts, etc.
5. Other Violations of the acts and regulations, e.g. i.e., minimum standards, treatment requirements, determination of active infestations, bonafide employee, storage, disposal, safety requirements,;

#### Gravity Ratings

~~124.05~~ 100.04 ~~Gravity Ratings~~ The following gravity rating and matrix is intended solely for use as a guideline for consideration by the hearing officials and



~~reviewing officers, Said hearing officials and reviewing officers~~ who are not bound by the matrix recommendations.

1. Violation is unintentional, there is no record of a prior similar violation by the accused within the past twenty-four (24) months, and/or there is a low probability of adverse effects, the adverse effects are unknown, or the adverse effects are minimal.
2. The violation is unintentional, there is a record of one or more repeat similar violations by the accused within the past twenty-four (24) months, and/or there is a high probability of major adverse effects, or the adverse effects are major.
3. The violation is intentional, there is no record of a prior similar violation by the accused within the past twenty-four (24) months, and/or there is a low probability of adverse effects, the adverse effects are unknown, or the adverse effects are minimal.
4. The violation is intentional, there is a record of one or more repeat similar violations by the accused within the past twenty-four (24) months, and/or there is a high probability of major adverse effects, or the adverse effects are major.

**~~\*See Penalty Matrix on following page.~~**

#### Penalty Matrix

100.05 Penalty Matrix appears below:

#### ~~PENALTY MATRIX~~

Type Violation	Gravity Rating			
	(1)	(2)	(3)	(4)
(1) Credentials (licensing, permit, identification card, registered technician, applicator certification, equipment marking, operation, product registration, etc.)	1 and/or 6	2 and/or 8	3 and/or 11	4 and/or 12
(2) Pesticides and labeling – usage (i) Canceled/suspended/stop-saled (ii) Non-registered (iii) Inconsistent with labeling (iv) Prohibited acts/use (v) Improper labeling	2 and/or 8	3 and/or 10	4 and/or 11	5 and/or 12
(3) Records, reporting, contracts, insurance, bonds, inspection, etc.	1 and/or 6	2 and/or 8	3 and/or 11	4 and/or 12



(4) Fraudulent, faulty, careless, negligent acts, etc.	2 and/or 8	3 and/or 8	4 and/or 11	5 and/or 12
(5) Other violations, i.e., minimum standards, treatment requirements, storage, disposal, safety requirements, etc.	1 and/or 7	2 and/or 10	3 and/or 11	4 and/or 12

1 = Warning letter and 0 to 30 days licensure suspension/modification.

2 = Warning letter and 0 to 90 days licensure suspension/modification.

3 = 3 to 12 month licensure suspension/modification.

4 = 6 to 12 month licensure suspension/modification or licensure cancellation.

5 = Licensure Cancellation.

6 = Civil penalty of \$0 to \$250.

7 = Civil penalty of \$100 to \$500.

8 = Civil penalty of \$250 to \$1000.

9 = Civil penalty of \$500 to \$1000.

10 = Civil penalty of \$500 to \$1500.

11 = Civil penalty of \$1000 to \$2000.

12 = Civil penalty of \$2000 to \$5000.

#### Aerial Applicators Exempt

~~125—The provisions of this regulation shall not apply to aerial applicators who are licensed under Sections 69-21-101 through 69-21-125 of the Mississippi Code of 1972.~~

~~(Chapter 7, "Rules of Procedure" adopted June 14, 2001.)~~

#### ~~SUBPART 3-BUREAU OF PLANT INDUSTRY~~